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N v H

FALINSENDELINI MSILA NKOSI

and

THE STATE

MILLER, JA :-

IN THE SUPREME COURT OF SOUTH AFRICA(APPELLATE DIVISION)

In the matter between:

FALINSENDELINI MSILA NKOSI Appellant

and

THE STATE Respondent

CORAM: MILLER, HEFER, et GROSSKOPF, JJA

HEARD: 17 SEPTEMBER 1985

DELIVERED: 19 SEPTEMBER 1985

J U D G M E N T

MILLER , JA :-

The appellant was convicted by a Magistrate of assault with intent to do grievous bodily harm and was sentenced to imprisonment for two years. His appeal to the Natal Provincial Division against the conviction

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and sentence was dismissed, but leave was granted by the Court a quo to appeal to this Court. The main ground upon which such leave was granted was that the appellant, whose intention it was to move this Court for an order setting aside the conviction and sentence to enable further evidence to be led upon re-opening of the trial, was considered by the Court a quo to have a reasonable prospect of success in his quest for such an order. The Court a quo was not at fault in so rating the appellant's prospects; the information placed before us by the appellant shows that at the trial, upon closure of the case for the State, the appellant's case was forthwith closed by the attorney acting for him. This, according to the appellant, was done without his assent

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and, indeed, against his wishes, for he had intended both to give evidence himself and to lead other evidence in his defence. The State does not oppose the appellant's motion to have the trial re-opened so that further evidence might be led. I consider that the State's attitude in this regard is, in all the circumstances, the proper one for it to adopt; it meets the requirements of justice.

In the result, it is ordered that the conviction and sentence are set aside and that the matter be remitted to the trial Court to enable it to receive and consider such further evidence as may be placed before it relevant to the appellant's guilt or otherwise of the offence charged. In the event that the trial cannot possibly be proceeded with by the judicial officer who constituted the Court at

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the trial, the Attorney-General may, if he be so advised,
charge the appellant de novo on the said charge before
a newly constituted Court.

S MILLER

JUDGE OF APPEAL

HEFER, JA)
)
GROSSKOPF, JA) CONCUR